

Implant Malpractice Insurance: Protection or Potential Problem

I recently reread an editorial I wrote for *Implant Dentistry* several years ago during my tenure as Editor-in-Chief concerning dental implant malpractice insurance. It concerned two of my dentist friends who became involved in litigation. Both practitioners had vast and varied experience in oral implantology, maintained their own practices, and were active in organized dentistry. Although they purchased insurance for asset protection, the unfortunate possibility of losing a portion (or perhaps all) of their resources existed.

Being involved in litigation is not unusual today. However, when a malpractice carrier refuses to defend a dentist in a lawsuit involving implants, the situation is no longer commonplace but extremely tragic. This happened in both cases. Both clinicians had to retain attorneys at astounding legal fees. Privacy concerns prevent me from discussing details about the cases mentioned above.

In recent years jury awards in the United States have increased dramatically along with settlements. Unfavorable judgments can have adverse financial and professional repercussions on dentists. If easy access to dependable and affordable liability coverage is not available to the profession, dentists can be reluctant to place and restore implants.

It is the opinion of some underwriters that implants are high risk procedures. There are aspects of dental practice that some companies providing malpractice insurance will not cover. Some underwriters believe excessive losses will occur as a result of implant coverage. Unfortunately, insurance companies have been able to impose the terms of policies to their advantage and to the disadvantage of the dental profession.

Dentists should read their insurance policies carefully and question anything they do not understand. Dentists must know if their policies are occurrence (protection during policy period) or claims-made (incident must occur and be reported during dentist's continuous coverage), and realize the need for tail-coverage (extended reporting endorsement) for the latter type. Premiums must be paid on time and should be sent by certified mail (return receipt requested), by priority mail with a tracking number, or handled by a private carrier that guarantees delivery by a specific day.

All unusual incidents or occurrences that could potentially

lead to litigation should be reported immediately. If in doubt, report the incident.

Implant consent forms must be detailed and reviewed slowly with the patient, making certain that the patient understands the risks and benefits of, as well as alternatives to, implant treatment. The consent form must be signed and dated by the dentist, the patient, and a witness. It is advantageous for clinicians to have implant consent forms customized for their practices by qualified attorneys, regardless of the cost involved. Patients should also be supplied with a written estimate of the treatment costs.

It is likely that cyber liability and reputational protection will be added to dental malpractice policies in the future if they are not already included.

A recent article in the *International Journal of Oral and Maxillofacial Implants*¹ analyzed malpractice claims in 121 cases from insurance company reports in Italy from 2006 to 2010. Of the cases evaluated, 9.9% went to litigation. The patients were female in 73.6% of the cases. Most of the errors occurred during implant insertion (82.6%). In more than half of the cases errors involved surrounding structures, including inferior alveolar nerve (32.2%) and lingual nerve (2.5%) damage, and maxillary sinus invasion (9.1%). Of significance, incomplete clinical documentation was readily perceived in 54.5% of cases.

Before purchasing a malpractice insurance policy that includes implant protection, clinicians should gather as much information as possible from dental societies, implant associations, dental literature, dental insurance carriers, and insurance underwriters. Seeking the advice of a qualified attorney is always helpful, but could be costly.

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REFERENCE

1. Pinchi V, Varvara G, Pradella F, Focardi M, Donati MD, Norelli G. Analysis of professional malpractice claims in implant dentistry in Italy from insurance company technical reports, 2006 to 2010. *Int J Oral Maxillofac Implants*. 2014;5:1177–1184.